



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 11, 1995

Ms. Christine Rodriguez
Staff Attorney
Legal and Compliance, MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR95-1397

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 23839.

The Commissioner of Insurance received an open records request for information regarding Life General Security Insurance Company of Miami, Florida ("LGS"). In particular, the requestor seeks the following information:

- (1) Cease and desist order of July 7, 1993, and all similar or comparable orders, issued by you or on your behalf by your agency regarding Life General Security Insurance Company of Miami, Florida.
- (2) All complaints from or on behalf of policyholders filed with you or your agency regarding Life General Security Insurance Company of Miami, Florida, together with correspondence and related documentation concerning consideration, processing, investigating and adjudicating such complaints.
- (3) Report prepared by your department staff in which Life General Security Insurance Company of Miami, Florida, was categorized as having "a history of high complaint volume with unsatisfactory settlement, denial of claims and delays in claim handling," which was entered into evidence in litigation with the company over the department's C&D order.

The Department of Insurance provided the information requested in item 1 and the complaints requested in item 2. However, the department is seeking to withhold the remainder of the requested documents under sections 552.103, 552.107, 552.111, and 552.112 of the Government Code.

First you contend that the information found under tab "A" is excepted from required public disclosure by section 552.103. To secure the protection of section 552.103(a), a governmental body must demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated and that the requested information relates to that proceeding. Open Records Decision No. 555 (1990) at 2. A contested case before an administrative agency subject to the Administrative Procedure Act, chapter 2001 of the Government Code, is a quasi-judicial proceeding for the purpose of section 552.103(a). Open Records Decision No. 588 (1991). Whether the requested information relates to the proceeding must be determined on a case-by-case basis. *See* Open Records Decision No. 551 (1990) at 5. However, information cannot be withheld under section 552.103(a) after it has been released to the party in litigation against the governmental body. Open Records Decision No. 525 (1989) at 4. We agree that the information found under tab "A" is excepted from disclosure by section 552.103(a). Therefore, section 552.103 permits you to withhold all of the documents under tab "A" until they are released to the other party in the litigation or until the litigation is over.

Second, you contend that the information found under tab "B" contains legal advice and opinion excepted from required public disclosure by section 552.107. Section 552.107(1)¹ excepts from required public disclosure information covered by the attorney-client privilege. For the purpose of the Open Records Act, this privilege encompasses information that reveals client communications to the attorney regarding the subject matter of the representation and attorney communications of legal advice and opinion to the client. Open Records Decision No. 574 (1990) at 3. A basically factual communication from the attorney to the client or between attorneys representing the client is not protected. *Id.* We have examined the documents under tab "B" and conclude that portions of these documents are excepted from disclosure by section 552.107(1). The remainder of the information in the documents is basically factual. You may withhold under section 552.107(1) the portions of the documents found under tab "B" that we have marked with brackets.

Third, you contend that the information found under tab "C" is excepted from disclosure by section 552.111. Section 552.111 provides as follows: "An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency is excepted from the requirements of section 552.021."² This

¹Section 552.107(2) concerns information subject to a court order prohibiting disclosure and is not involved in this case.

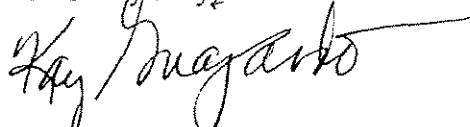
²Section 552.021 states the general rule that public information held by a governmental body is available to the public, at a minimum, during normal business hours.

office has interpreted this section to except from disclosure internal agency communications consisting of advice, recommendations, or opinions reflecting the policymaking processes of the governmental body. Open Records Decision No. 615 (1993) at 5. Section 552.111 does not protect facts or written observations of facts. *Id.* We have examined the information found under tab "C" and have concluded that it contains some recommendations and opinions that may be withheld under section 552.111. We have marked the information that may be withheld. The remainder of the information under tab "C" is factual and, therefore, must be released.

Finally, you contend that the document found under tab "D" is a target examination report excepted from disclosure under section 552.112. We agree. Section 552.112 excepts from required public disclosure "information contained in or relating to examination, operating, or condition reports prepared by or for an agency responsible for the regulation and supervision of financial institutions or securities, or both." Insurance companies are "financial institutions" under section 552.112. Open Records Decision No. 158 (1977) at 5-6. However, section 552.112 applies only to specific examination, operating, or condition reports. Open Records Decision No. 483 (1987) at 9. The report you submitted for review concerns the financial condition and operations of LGS. Therefore, you may withhold the report under section 552.112.³

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Open Records Division

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Ref.: ID# 23839

³We decline to address whether a regulation promulgated by the department requires you to release the report found under tab "D." See 28 T.A.C. § 7.83(f)(1). The department must determine the application of its own regulations. We note, however, that section 552.112 is a discretionary exception to required public disclosure and, thus, that the department must release the report if the regulation applies to the report. See *F.A. Gillespie & Sons Co. v. Railroad Comm'n*, 161 S.W.2d 159, 162 (Tex. Civ. App.-Austin 1942, writ ref. n.r.e.) (stating that a state agency is bound by its own valid rules).

Enclosures: Marked documents

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(w/o enclosures)